



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Beall Plumbing and Heating Co.--Reconsideration  
**File:** B-243230.2  
**Date:** July 23, 1991

Leonard A. White, Esq., Goldstein, Handler and White, P.C.,  
for the protester.  
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

### DIGEST

Request for reconsideration of decision dismissing protest is  
denied where protester fails to show that prior decision  
contains either errors of fact or law or that the protester  
has information not previously considered that warrants  
reversal or modification of the decision.

### DECISION

Beall Plumbing and Heating Co. requests reconsideration of our  
decision in Beall Plumbing and Heating Co., B-243230, Mar. 21,  
1991, 91-1 CPD ¶ 315, in which we dismissed Beall's protest of  
the award of any contract under invitation for bids (IFB)  
No. DACA31-91-B-0043, issued by the United States Army Corps  
of Engineers as a repurchase after default for the  
completion of a child development and religious education  
building in Fort Belvoir, Virginia. We dismissed Beall's  
protest without first obtaining an administrative report from  
the agency because Beall's allegations concerned the  
settlement of obligations between private parties, and thus  
did not invoke the General Accounting Office's bid protest  
jurisdiction.

We deny the request for reconsideration.

In its initial submission to our Office, Beall stated that  
2 years ago the Army contracted with Innovative Military  
Technologies, Inc., d/b/a Meridian Construction Co. (contract  
No. DACA31-88-C-0315 (0315)), for the construction of the  
facility at issue. Meridian, as the general contractor,  
furnished performance and payment bonds pursuant to the Miller  
Act, 40 U.S.C. § 270a(a) (1988), naming two individuals as  
sureties. According to Beall, Meridian was terminated for

default on April 10, 1989, and the completion contractor subsequently retained by Meridian's sureties, Certified Surety Management, Inc., was also terminated for default. Beall, which apparently was a subcontractor that provided labor or materials to Certified, alleged that Certified defaulted on its contractual obligations to pay Beall. In its initial submission to our Office, Beall argued that the Army should pay Beall money owed to it by Certified from funds presumably retained by the Army under contract No. 0315 and Certified's takeover agreement.

As we stated in our previous decision, under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3552 (1988), our Office is authorized to decide a "protest concerning an alleged violation of a procurement statute or regulation" by a federal agency. Although Beall characterized its submission to our Office as a bid protest, we found that Beall's allegations that it had not been paid by Certified did not concern a violation of either a procurement statute or regulation; rather, they concerned the settlement of obligations between a prime contractor and its subcontractor, a matter which does not directly involve the government. United States Coast Guard--Payment of Contract Retainages to Subcontractors, B-218813, April 9, 1986. Accordingly, we dismissed Beall's protest, stating that a subcontractor's legal remedy is an action on the contract against the general contractor, or against the sureties on the payment bond brought under the Miller Act. See 40 U.S.C. § 270b(a); United States Coast Guard--Payment of Contract Retainages to Subcontractors, B-218813, supra, at 2.

Beall states that we improperly dismissed its protest because, contrary to our conclusion, its complaint raised issues that properly invoked the jurisdiction of our Office. Beall asserts that the principal basis of its initial complaint was not that Certified defaulted on its obligations to pay Beall; rather, the protester contends that it complained that the Army violated "generally recognized pertinent procurement policies prescribed by the Federal Acquisition Regulation concerning the award of contracts subject to the mandates of the Miller Act, 40 U.S.C. § 270(a)." Specifically, Beall states that it protested that the Army negligently failed to investigate the adequacy of the assets pledged by Meridian's individual sureties, and improperly failed to perform a required responsibility investigation of Certified.

Under our Bid Protest Regulations, to obtain reconsideration the requesting party must show that our prior decision contains either errors of fact or law or that the protester

has information not previously considered that warrants reversal or modification of our decision. 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.12(a)). Beall has made no such showing here.


While Beall alleged in its original submission that the Army violated various regulatory and statutory provisions with respect to the contracts awarded to Meridian and to Certified, those allegations were at best secondary to Beall's main complaint--that Certified had not paid Beall. Throughout its initial submission, Beall alleged that Certified had "refused to honor [its] Miller Act obligations . . . particularly in the payment of . . . subcontractors, including Beall." Beall also argued that the Army had a duty to maintain a "remedial fund for the use and benefit of unpaid claimants," such as Beall, and that "Beall [has] a proper claim for non-payment under the payment bond." In its prayer for relief, Beall specifically requested that the Army be instructed to maintain the funds allegedly retained under contract No. 0315 "in a separate fund for unpaid Miller Act claimants," such as Beall.

Beall supplemented its original submission to our Office with "a summary of the amount due and a summary of the amounts paid to date." Beall submitted a document labeled "Job Costs, Contract No. [0315]," in which Beall identified total costs, amount paid to date, and an item labeled "Amount Due Beall." Attached to its supplemental submission, Beall included photocopies of what appeared to be a ledger listing checks received by Beall from Certified, with columns labeled "total amount paid," and "contract amount." Towards the end of the ledger appears what Beall identified as the total amount Certified paid Beall. Conspicuously placed at the bottom of the last page of the ledger is the hand-written notation "balance due upon completion," with an arrow pointing to the last amount entered on the ledger, presumably indicating unpaid moneys Certified owed Beall. A review of Beall's original and supplemental submissions to our Office clearly shows that Beall's complaint primarily concerned a private matter based on the alleged failure of Certified to meet its contractual obligations to pay Beall, and thus did not invoke our Office's bid protest jurisdiction. United States Coast Guard--Payment of Contract Retainages to Subcontractors, B-218813, supra.

Even if Beall's complaint were that the Army failed to investigate the adequacy of the assets pledged by Meridian's individual sureties, and failed to perform a responsibility investigation of Certified, we would not consider the protest. Under the bid protest provisions of CICA, 31 U.S.C. §§ 3551-3556, only an "interested party" may protest a federal procurement. To qualify as an interested party, a protester must be an actual or prospective bidder or offeror whose

direct economic interest would be affected by the award of a contract or the failure to award a contract. See 31 U.S.C. § 3551(2); 56 Fed. Reg. 3,759, supra (to be codified at 4 C.F.R. § 21.0(a)). A subcontractor such as Beall does not have the requisite interest to be considered an "interested party" to protest under CICA, since, even if its protest were sustained, it is not a prospective or actual bidder that would be in line for award of a contract. Nasatka Barrier, Inc., B-234371; B-234578, Mar. 31, 1989, 89-1 CPD ¶ 349. In addition, Beall's allegations regarding the Army's investigation of Meridian's sureties and of Certified concern an agency's affirmative determination of a contractor's responsibility, a matter which we will not review except in limited circumstances not present here. See 56 Fed. Reg. 3,759, supra (to be codified at 4 C.F.R. § 21.3(m)(5)); King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177.

The request for reconsideration is denied.

  
for James F. Hinchman  
General Counsel